



April 11, 2001

Mr. Ricardo Morado  
Roerig, Oliveira & Fisher, L.L.P.  
855 West Price Road, Suite 9  
Brownsville, Texas 78520-8786

OR2001-1457

Dear Mr. Morado:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145846.

The Brownsville Independent School District (the "district"), which you represent, received a request for copies of incident reports made about an altercation that occurred at a school basketball game and copies of minutes of meetings held by the district with regard to actions to be taken by the district because of said altercation. You state that you have released to the requestor a redacted copy of records that are responsive to the request. You claim that the redacted information is excepted from disclosure under the Family Educational and Privacy Rights Act, ("FERPA"), 20 U.S.C. § 1232g and section 552.114 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

We note at the outset that section 552.022 of the Government Code makes certain categories of information expressly public unless they are expressly confidential under other law." One category of expressly public information under section 552.022 is "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by [s]ection 552.108[.]" Gov't Code § 552.022(a)(1). You have submitted for our review several documents which you characterize as incident reports. Therefore, unless the redacted information contained in these reports is "expressly confidential under other law," the reports must be released in their entirety.

You claim that the redacted information is excepted from disclosure pursuant to FERPA and section 552.114 of the Government Code. FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly

related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). Information must be withheld from required public disclosure under FERPA only to the extent “reasonable and necessary to avoid personally identifying a particular student.” *See* Open Records Decision Nos. 332 (1982), 206 (1978).

In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a “student record,” insofar as the “student record” is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. However, since you submitted the redacted information for our review, we will consider whether any of it is protected by FERPA. After careful review, we agree that all redactions, except for one, may reveal or tend to reveal personally identifiable information directly related to a student that must be withheld pursuant to section 552.114 of the Government Code and FERPA. We have marked the information in Exhibit B that must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839.

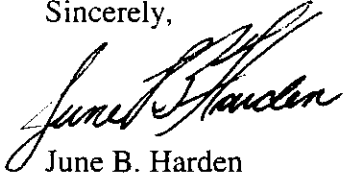
The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "June B. Harden". The signature is fluid and cursive, with the first name "June" being more prominent.

June B. Harden  
Assistant Attorney General  
Open Records Division

JBH/RJB/seg

Ref: ID# 145846

Encl. Marked documents

cc: Mr. Mariano Ayala  
25 Holly Lane  
Brownsville, Texas 78520  
(w/o enclosures)